Privacy matters

2010 Annual Report of the Yukon Information & Privacy Commissioner

While the secure cards have features that protect against fraud and identity theft, individuals must help protect their identity by keeping careful track of their ID – only allow law enforcement personnel to scan your driver's license.

Ensuring that Secure Driver's License and ID cards *are* secure

2010 Comments:
Community Services

When the government made a plan to develop a new Secure Driver's License and General Identification Card for Yukoners, they recognized the importance of building privacy protections into every part of the new system.

Community Services invited our input, early in the process, and both offices collaborated on the project for over a year. During the program development, we made several recommendations to improve the program and ensure Yukoners' privacy. For instance, the personal information collected by the Motor Vehicles Branch during the application process will be kept in secure storage and destroyed on a prescribed schedule. No personal information is shared with the card designer or others without proper authority.

Yukoners, like other Canadians, are finding more and more need for government-issued identification. The implementation of the new Secure Driver's License or General Identification Card is a mark of progress.

While the secure cards have features that protect against fraud and identity theft, individuals must help protect their identity by keeping careful track of their ID and never lending it to others.

The bar code contains the same information as that on the face of the card and should be protected. You should only allow law enforcement personnel to scan your driver's license.

Consulting with our office early in the development stage resulted in a program that protects the privacy of Yukoners' personal information and a process that complies with the *ATIPP Act*. This approach by Community Services should be commended and is a great example of a department working with us for the benefit of all Yukoners. ■

"Comments" in the Public Interest

Commentary by the IPC on the access and privacy implications of legislation/programs is vital. Our expertise brings a unique perspective and comments are always made in the public interest.

Why do we have an Information and Privacy Commissioner?

The world of information management and privacy protection is evolving—rapidly. It touches the lives of every citizen, whether through social networking or a bar code on your driver's license. Government is constantly making decisions and implementing programs that affect the access and privacy rights of us all. Our office is a place to have those decisions and actions reviewed or investigated and explained. It is also my role as Information and Privacy Commissioner to monitor how the *ATIPP Act* is administered to make sure that its purposes are achieved.

We review government decisions about access requests, investigate complaints and comment on legislation and programs that affect the access or privacy rights of Yukoners.

Every matter that comes to us is given an impartial review. We listen, apply the law and help people reach a solution—it is not about pointing fingers or laying blame. Most of our matters are settled. This means government hears what we say and is willing to change. If a matter is investigated or goes to inquiry, I can make recommendations to affect the outcome. We have worked hard to foster a relationship where government consults with us on initiatives involving personal information. Our office is a valuable resource for government and citizens alike.

The IPC is an Officer of the Legislative Assembly but is independent of government and political parties. The IPC is impartial; she is neither an advocate for an individual nor a defender of government decisions.

All services of the IPC are free and confidential.

Our team, from left to right:
Danielle Noel, Susan Donnelly, Tracy-Anne McPhee, Veronique Herry-Saint Onge, Catherine Buckler Lyon

Our Mission

- promote openness and accountability in public administration
- provide independent, impartial review and investigation of complaints about access and privacy
- comment on the access and privacy implications of legislation and programs
- provide independent oversight of the *Access to Information and Protection of Privacy (ATIPP) Act*

My message to all Yukoners

It has been almost 15 years since Yukon has had an access and privacy law. Still, raising awareness and helping Yukoners navigate it remains an important part of my independent oversight role as Yukon's Information and Privacy Commissioner (IPC).

The Access to Information and Protection of Privacy (ATIPP) Act is complex and technical. It has two purposes. One is to protect the privacy of personal information. The other is to set out a process to access the information held by government and other specified bodies. It's not possible for me to tell every citizen individually why the *ATIPP Act* is important and how it affects their lives. So, our outreach this year focused on building relationships one conversation at a time. To do this, we met specifically with those Yukoners who work to assist other Yukoners. A community visit to Dawson City put us in touch with local non-profit organizations, schools, businesses and health care providers. Presentations at a Rotary Club got the word out to many people who serve our communities. I also met with members of the Legislative Assembly and their staff to ensure they had up-to-date information about our services and how we might assist their constituents. The message to each was the same: the IPC can help.

Looking Forward

In 2011 we will continue our work to raise awareness of the services we provide and the results we can achieve for both Yukoners and their government. We will continue to monitor access and privacy issues on behalf of all Yukoners. More community visits, a new website and plain language materials are also planned.

The government is working on new regulations to expand the scope of the *ATIPP Act* by designating more public bodies. I look forward to participating in that process and being a strong voice for Yukoners in the public interest.

Currently the Ombudsman/Information and Privacy Commissioner position is authorized as one half-time job. This limitation makes it difficult to carry out the responsibilities of these positions effectively. To ensure that Yukoners are well served by the office, I will continue to urge the government to make the position full-time.

Our office is staffed by three dedicated women who use their expertise and professionalism to assist me in finding solutions for Yukoners. For this, I thank them.

15th Annual Report

It is my honour and privilege to offer the people of the Yukon this 15th, and my fourth, Annual Report. It has been sent to the Honourable Ted Staffen, Speaker of the Yukon Legislative Assembly, who will present it to the Assembly as required by the *Access to Information and Protection of Privacy Act*.

Tracy-Anne McPhee
Ombudsman
Information and Privacy Commissioner

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Health and Social Services agreed to have information for parents of children with disabilities available on-site and in the NGO office.

RIGHT*to*KNOW

Right to Know Day began in 2002 and has grown into a worldwide, week-long event each September to raise global awareness of the right to access government information and to promote access to information as a fundamental human right. Annual local events help Yukoners learn about their access and privacy rights.

Be helpful through proactive disclosure

2010 Complaint:
Health and Social Services

Sue, the mother of a disabled child, entered into an Agreement with Health and Social Services (HSS) to receive family support for her child.

Review and Complaint Summaries

These stories are good examples of how our office helps Yukoners and the Yukon government with privacy and access to information issues. The names of the individuals have been changed to protect confidentiality.

She asked for copies of all the documents and legislation referenced in the Agreement. HSS said she could find the information she wanted at a local non-governmental organization (NGO) office but the information wasn't there. Given the circumstances, Sue thought that HSS should be more helpful rather than making her run around town to find the information she wanted and complained to our office. When we contacted HSS, they agreed that the information would be made available to Sue and in future to other parents of children with disabilities. HSS implemented proactive disclosure of the information by placing copies in their resource rooms and ensuring copies were also in the NGO office. ■

Canadian IPCs meet in Whitehorse

It was wonderful to welcome all of the Canadian Information and Privacy Commissioners to Whitehorse for our Annual Meeting this year. A full agenda and warm Yukon hospitality awaited our visitors. Some of the topics discussed were: open government and proactive disclosure, electronic health records, Access and Privacy by Design, social networking, public education, Right to Know Week, Data Privacy Day and solicitor-client privilege.

Privilege: it can be a matter of degree

2010 Inquiries:
Public Service Commission,
Department of Finance

In 2010 the IPC conducted two inquiries into cases in which public bodies claimed that the records requested by individuals could not be disclosed because they were subject to solicitor-client privilege.

In the first, Lionel asked for a review of a decision by the Public Service Commission (PSC) to refuse to disclose records relating to legal fees. These were fees paid to a law firm that had been hired by the government for a case involving Lionel. The IPC found that out of 18 records, eight were not subject to solicitor-client privilege. Ten of the records contained some information that was subject to solicitor-client privilege and some information that was not. The IPC recommended the eight records be disclosed as well as the non-privileged information in the other ten. The information that could properly be disclosed consisted of: total amounts due, name of the lawyer, name of the law firm and reference to the addressee.

The second inquiry concerned Jill, a staffer who worked for an opposition office. She wanted to review a two-page retainer letter for legal services from the Department of Finance. Jill argued that Finance had waived their privilege when the Premier, as the Minister of Finance, spoke publicly about the resulting legal opinion. The IPC found that the Minister's remarks did not constitute waiver of the privilege. However, she also found that some of the information in the record was not subject to solicitor-client privilege and recommended that the part of the record not privileged be disclosed. ■

Access to information hampered by administrative delay

2010 Review:
Highways and Public Works

Peter requested records in relation to two Highways and Public Works (HPW) Requests for Proposal. The *ATIPP Act* requires that access requests be completed within 30 days.

HPW asked the government Records Manager for more time to answer the request so they could consult with third parties. Their request was granted.

Peter objected and asked the IPC to review the matter. Peter couldn't understand why he hadn't at least received some of the records as he believed third parties would need to be consulted only with respect to a few of the records he requested. There were also some other questionable delays. Through mediation, the Records Manager recognized that several things had gone awry and apologized to Peter for the administrative delays that occurred. She also immediately facilitated release of the responses on the records that were not subject to third-party consultations. ■

Statistics

ATIPP Act Matters 2010

In 2010, we received 208 complaints. Of those, 80 were within the *Access to Information and Protection of Privacy Act* jurisdiction; 86 were within the *Ombudsman Act* jurisdiction. We provided support and assistance on another 42 matters.

Non-jurisdictional matters (s.8)	42
Requests for Information	43
Requests for Review (s. 48)	17
Complaints (s.42)	9
Comment on Legislation/Programs (s.42(c))	11
TOTAL	122

Requests for Review	
Brought forward from 2009	2
Received in 2010	17
TOTAL	19
Completed in 2010	11
Carried forward to 2011	7

Complaints	
Brought forward from 2009	1
Received in 2010	9
TOTAL	10
Completed in 2010	4
Carried forward to 2011	6

Comment on Legislation/Programs	
Brought forward from 2009	12
Received in 2010	11
TOTAL	23
Completed in 2010	10
Carried forward to 2011	13

Community Outreach 2010

- Yukon College – Whitehorse and Dawson City
- Yukon Anti-Poverty Coalition – Whitehorse Connects,
- City of Whitehorse
- Dawson City Chamber of Commerce, Robert Service School, Porter Creek High School, F.H. Collins High School
- Vanier Catholic Secondary School, Rotary Club of Whitehorse Rendezvous, Dawson City Women's Shelter
- Member of Parliament Offices – Whitehorse and Dawson City
- Independent MLA Office
- Yukon Party Caucus, Yukon Liberal Party Caucus, Yukon New Democratic Party Caucus
- Golden Age Society

Budget Summary

The budget for the operations of the Office of the Ombudsman and the Information and Privacy Commissioner is submitted annually to the Members' Services Board for review before being approved by the Legislative Assembly. The budget summary below covers both functions of the office for the period from April 1, 2010 to March 31, 2011.

Category	Expenditures
Personnel	$408,000
Office and Operations	$119,000
Supplies and Services	$5,000
Capital Items	$5,000
TOTAL	$537,000